

A N S W E R

To the BOOK of

Sir *T H O M A S M A N W A R I N G E*Of *Peewer* in *Cheshire* Baronet.

ENTITULED

A Defence of *A M I C I A*Daughter of *H U G H C Y V E L I O K*Earl of *Chester*.

Wherein is Vindicated and Proved, that
the Grounds declared in my former
BOOK, Concerning the Illegitimacy of
A M I C I A, are not Evinc'd by any solid
Answer or Reason to the contrary.

By Sir *P E T E R L E T C E S T E R*
Baronet.

Anno Dom. 1673.

AN S V E R

BOOK of

THE

WITNESSES

IN

THE
COURT
OF
COMMONS
IN
PARLIAMENT
ASSEMBLED
IN
THE
YEAR
OF
OUR
LORD
ONE
THOUSAND
SEVEN
HUNDRED
AND
EIGHTY
FOUR



TO
Sir Thomas Manwaringe
 Baronet.

SIR,



YOU are pleased to tell
 me in the Front of the
 Epistle before your Book,
That it will appear strange
to those that know the
nearness of Blood betwixt us, that you
should appear in Print against me.

Truly I believe it is only the
 Zeal of your Opinion, touching the
 Legitimacy of *Amicia*, which per-
 haps hath taken but too deep a root
 within you, that makes you now
 endeavour to incline the World to

be of your Opinion ; and that the grounds alleadged in my Book (swaying my Reason to the Contrary Opinion) are no just grounds to support it : But though we differ in Opinion, yet we may be loving Friends: for I hope we are *Pii Adversarii*, both Contending for the Truth rather then Victory : And therefore wish that we may be firmly united, as well in the bond of Friendship as Nature; and that as much as ever, without any Animosity at all.

And you tell me further, *That if I would have been contented to have delivered what I did conceive concerning Amicia, as an uncertainty only (as I have done that of Roger, Son of the said Earl Hugh) I know you would have rested satisfied, without giving me or the Reader the trouble of any one of your Lines.*

To this I say, I remember well you moved me to have put *Amicia* under the head or notion of the doubt-

doubtfull Issue of Earl *Hugh*; at which time I told you, I must either put her under the Title of Lawful Issue, or Unlawful Issue; for there was no *Medium*: She must certainly be either Lawful, or Unlawful, if any Daughter at all: And I thought it not fit to put down in my Book any third Title of Doubtful Issue: But till now, I never understood you would be content with the words which I put down concerning *Roger* Son of the said Earl; for else (if I know my own mind) I should certainly have gratified your desire therein. For in the next Page of my Book, I say, I shall then add the Reasons why I conceive her to be a Bastard; which is the very Expression that I used to the rest.

There are yet two or three things in your Epistle, which in the first place I desire to observe unto you.

The first is, *That you say, you very much wonder when I mention Raufe*

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(a) I apprehend not why you call him chief Justice of *chester*, when in those Ages there was onely one Judge of *chester* at a time.

Manwaringe Chief (a) Justice of Chester, and his Son Roger, and William Manwaringe younger Son of the said Roger, that I take not notice that they were all three Knights; because I had seen Proofs thereof by many Deeds, where the word Dominus is prefixed to each of their Names; which was not (that you know of) used to be done to any in those elder Ages, but those that were Knights, Clergy men only excepted.

But I am very confident, that it was applied also to the better sort of Gentlemen in those Ages, who were no Knights; nor is it a sure Rule to be always understood of a Knight, unless the word *Miles* do follow; and in those elder Ages it was sometimes prefixed, and oftener omitted, even to the same men; as *Domino Galfrido de Dutton*, who in the Original Chart of Nether-Tabley writes himself onely — *Ego Galfri- dus de Dutton dedi*, &c. and several other Deeds I have seen of the same Person

Person (who was lineal Ancestor
to Warburton of Arley) wherein I
dare affirm among the Witnesses sub-
scribed, he hath five times and more
the word *Dominus* omitted, for once
that we find it prefixed to his Name;
and am very confident was not in
him, as many others also, to be con-
strued any more then Master *Geffrey*
Dutton, and that he was no Knight;
for when the Party makes a Deed,
he will usually use what Title he
hath, especially if he be a Knight
(for Esquires in those Ages were
none, which came not to be added in
old Deeds till after the Statute of
Additions under *Henry* the fifth, al-
though it was first made a distinct
Title under *Richard* the second) he
will be loath to loose that Title;
whereas Subscription of Witnesses,
which are put by the Writer of the
Deed, many times have some distin-
ction of the better sort of Gentlemen
from the rest by the word *Domino*;
which word is never used in old
Deeds by the Party himself, but
where it is joyned with another
word

word, as *Ego Willielmus Manwaringe Dominus de Feever*; so also in your Book, p. 70. where it is so used — *Ego Robertus Dominus Moaldia*; for *ipsa vox (Dominus) primo de Imperatore, postea de Rege, demum de quovis Territorii Domino enunciata fuit: Spelmanni Glossarum, p.182. b.* And in Subscriptions it is very uncertain; sometimes added, and sometimes not added: And so are the placing of the Witnesses in those Subscriptions of elder Ages very uncertain also; for we may observe that the same men, being Witnesses to several Deeds, are many times one put before the other in one Deed, and the same put after the other in another Deed: As to the word *Dominus*, if you please to look back on those your Ancestors mentioned in those Deeds put down in your Book, as p. 27. *Radulfus de Meidnilwaringe Omnibus, &c.* you have here no Title used, and yet this was after Bertrey his Daughter was marriageable; but you will say, possibly that was before he was Justice of *Chester*, see then p.70.

Testi-

Testibus Radulfo de Menilwarin. tunc Justiciario Cestrie, &c. without any *Domino* prefixed; and very many others I have seen also, where he is so Subscribed; look but into your own Deeds diligently, and tell me if you find not many more Subscriptions mentioning *Roger Manwaringe*, and *William Manwaringe*, without the word *Domino* then with it; and not any Writing thus, either *Ego Rogerus*, or *Ego Willielmus Manwaringe Miles*; see also p. 69. where most of the Witnesses are put with *Domino* prefixed; and p. 70. the next Deed following, *Raufe Manwaringe* then Justice, *Hamon Mascy*, *Guarin Vernon*, and *William Venables* (who are all Witnesses to the other Deed) are in this put down without *Domino* prefixed; nor is there any one in this Deed, which hath *Domino* prefixed: So that it is plain it was sometimes added by the Clerks, and sometimes not added at pleasure: and also used to the better sort of Gentlemen who were no Knights, as well as to Knights and Clergymen: And at this day, as the word

word [Sir] is in common Discourse applicable to Persons of Quality from the highest to the lowest in it's larger notion, so *Dominus* is applicable to any Knight or Gentleman; as if I should say, *Domine, quæso, num hoc verum est quod dico, necne?* but in this thing here spoken of, I remember you did mention it to me; and I fully intended to have called them all Knights, but I know not by what Fate it was forgotten; whether by my intentness on more weighty things to amend them before my Book went to the Press, or my Book having been now above a year and a half out of my hands since I sent it away from me, it seems I lost the opportunity and forgot it; and I had rather give to any, especially to your family, more than is due, then less; howbeit it is not possible for me to place my words so in every particular, as can give all men content.

Again you tell me, *That you might take notice of my mistake in my Book,*
P. 336. where I blame the Herald who
in

in Queen Elizabeth's time made for the then Sir Randle Manwaring's Coat, Barry of twelve Peeces Argent and Gules; for which I cited Guillim's Heraldry; but that was the mistake of Guillim, not the Herald; for that which the Herald did then allow (which I Blazoned amiss) was Argent, six Barrulets Gules — And the Manwarings of Pever (now next heir Male to Manwaringe of Warmincham) have a good right to the six Barrulets with which Sir Roger Manwaringe did Seal, as well as they have to the two Barres which Sir Thomas Manwaringe of Warmincham did bear.

But here is the Herald's errour, that it should be given by him to *Manwaringe of Pever* now in these late Ages as his most proper Coat; whereas ever since the time of the said *Sir Roger Manwaringe*, as well the Heirs of the right Line, as also the *Manwarings of Pever* (after they became next Heir-Male) have constantly born the two Barres for some hun-

hundreds of years without alteration
 successively, and not the six Barrulets
 at all till this Change of the
 Herald in Queen *Elizabeth's* time:
 why now, though the Posterity of
 Sir *Roger* might have continued the
 right of six Barrulets, yet they changed
 the same to two Barres which
 after so many Ages hath now gained
 an Hereditary right; for at first Coats
 were assumed at Pleasure; but from
Henry the Third's time downward
 Arms began to be made Hereditary;
 and most Gentlemen from that time
 downwards did bear the Coat of
 their Ancestors, as it were heredita-
 rily; and here is the Absurdity, that
 the Herald alters the Coat again to
 six Barrulets, after so many Ages past,
 when the two Barres had been so long
 retained as an Hereditary right; for
 let any man but imagine what con-
 fusion Changes would make, in case
 every Son should vary from his Fa-
 ther by bearing a distinct Coat, and
 stick to no certainty: wherefore it
 seems absurd, and I know not whe-
 ther it may destroy a right already
 gained

gained in this Case ; for it is usage
onely that makes a right herein, as
you may see in the great Suit be-
tween *Scroop* and *Grosvenour*, in the
Marshall's Court under *Richard* the
Second, concerning the bearing of a
Coat of Armes, whereto both chal-
lenged a right and Property by
Usage, but no other way.

And thirdly you tell me, *That you
suspect I have branded several Persons
in my Book with Bastardy, without
direct Proof thereof; and although you
concern not your self for any, but
some of those by me mentioned, when
I write of the base Issue of Hugh Cy-
velioke; yet if you make it appear that
I have there without any certainty asper-
sed two other Ladies besides Amicia,*
*you hope I shall have no just Cause to
blame you.*

Truly I shall not, For those you
hint upon, but name not, I can make
no answer to take off your suspici-
on, till I know who they be; but
the other two Ladies besides *Ami-
cia,*

cia, I conceive you mean *Geva* Daughter of *Hugh Lupus*, and the Wife of *Bacun* Daughter of *Hugh Cyveliok*; which two you bring in upon the account of *Amicia*: for those being proved Bastards, will be a great blow to *Amicia*; and had not the Case of *Amicia* been concerned, I believe these two had never been spoken of by you, nor suspected nor doubted of: But if I do make good what I have Alledged, I hope then you will recant for branding me with an Aspersion; which I think I shall do, with as much certainty as the nature of the thing and times will admit.

So much touching your Epistle: and now I proceed to the rest of your Book.

WHere in the first place you wonder, *That I should so peremptorily call Amice a base Daughter of Hugh Cyveliok, unless I had more sure grounds to go upon; and though it be your Taske onely to defend Amicia, yet you suppose you shall make it appear before you have done, that I go on no absolute certainty, in calling Bacun's Wife, Mother of Richard Bacun Founder of Roucester-Priory, another base Daughter of Hugh Cyveliok, or in calling Geva a base Daughter of Hugh Lupus: and then you would remind me of what I have been formerly told, that those Heralds that gave Manwaringe of Pever the Quartering of the Earl of Chester's Coat in Queen Elizabeth's time, were M^r. Cambden, and M^r. Erdeswick, Persons that you do not know why I should so much mislike their boldness and ignorance (as I call it) for their so doing.*

B

Whereas

Whereunto I say, My grounds are certain enough to prove them all three Bastards, and such as yet is not refelled by you, by any substantial Answer to the contrary, and I believe in the Loose it will so appear; as to the Heralds you mention, you say you would remind me that you had formerly told me of them; but you never told me till long time after that part of my Book was written; what then? Mr. *Cambden* I hold a most Learned man, and one of the best Antiquaries of our Nation in this last Age; but yet for doing this thing, whether *Cambden* himself, or who ever else, I say he was overbold in it, and it is erroneous; for though in the Age of *Henry* the Second Quartering of Coats was not in use, yet about the Reign of *Henry* the Fourth, every Gentleman began to Quarter the Coat of the chief Heir with whom his Progenitor had matched; and after *Edward* the Fourth's time, marshalling of many Coats together came into use, and this was to shew their right; so saith *Cambden*

den himself in his Remains, p. 225. of the Edition thereof put out by *Philpot*. Now between the Age of *Henry* the Fourth and *Queen Elizabeth* had elapsed above 150. years, time enough to have taken notice of such a Quartering, if it had been right and due; but you ingeniously confess in the place cited, that perhaps in strictness it may be true, that it doth only belong to those of the Whole-blood to Quarter Coats, and that to shew their rights; yet it being now a common practice for those of the Half blood to do it, you know not why it should be accounted a crime in your Family more then in others in the like Case: True, it is as lawful in your Case as any other, if your Case be the same with others: I say, the Quartering of the Coat of a Coheir ought not to be given by any Herald to any, but the Coheir of the Whole-blood; which in strictness, you do confess: Is not that Herald then to be disliked, both for his boldness and error, who shall at any time give it to the Half-blood? but in this Case

I believe it will not appear to be given to the Half-blood, as you call it; unless it be meant of a Half-blood illegitimate.

Page 23.

You say, *Because Manwaringe was not an equal Competitor to the Coheir of the Earl of Chester, could be no substantial Argument to prove Amicia Illegitimate; and so you pass to illustrate your Ancestour to have been seized of a good Estate of Lands.*

Whereunto I say, I do not urge that for an Argument of her Illegitimacy, we shall come to that anon. I only there observed chiefly, that she was no Coheir, which you grant; and therefore the Herald ought not to have given to *Manwaringe* the Quartering of the Earl of *Chester's* Coat at all; which you do grant to be in strictness true, and which I have touched immediately before; and I shall likewise grant your Family to be a Family of good Quality, both
at

at that time, and at this present also; I should be loth to say to the contrary: but as to your note of Dukes and Earls to have been anciently Judges of *Chester*, you should have distinguished of the times; for that was not till the Reign of *Richard* the Second (who made Deputies to act in their stead) before which time you find no such great Persons Judges there; nor from *Henry* the Seaventh's time downwards.

Thirdly, Page 24.

You say, *The case was not the same with the other Daughters of the Earl of Chester, when Rafe Manwaringe married Amicia, as it was afterward; for Amicia was married in the life time of her Father Earl Hugh; whereas those four came to be such great fortunes upon the death of their Brother Randle Earl of Chester and Lincolne without Issue, to whom they then became Heirs, they being his Sisters of the Whole-blood; and though all or most of them were married before they*

became to be his Heirs, yet the said Earl Randle having never had Issue, the expectation of that Estate added to their other Fortunes, must needs make them very considerable Fortunes; whereas Amicia was but of the Half-blood, being a Daughter of Earl Hugh by a former Wife.

My Answer.

Herein first you beg the Question, which was never granted, nor can ever be proved, That *Amicia* was of the Half-legitimate Blood to Earl *Randle* by a former Wife of Earl *Hugh*: but *dato hoc, sed non concesso*: It is more rational to imagine, that Earl *Hugh* matching his only Daughter by a former Wife (as you suppose) in his life-time, would have married her to as considerable a Person, as was either provided by himself, or his Son, for his younger Children by a second venter, whose expectation (which you conceive added to their Fortunes, whereby they matched to so great Persons) could
not

not be much, being grounded upon great uncertainties, since it could not be foreseen (when they married) that their Brother should dye without Issue, who afterwards married two Wives successively, purposely to have Issue of his own Body to inherit his own Lands.

Page 25.

You say, That I acknowledge I have been informed that three eminent Judges, and four Heralds, are of Opinion that Amice was Legitimate; and was also told lately by one, whom you hope I have no reason to discredit, that since then several other Judges and Heralds have been consulted; all which did concur in the same Opinion, that Amicia was no Bastard.

My Answer.

Whereunto I answer and confesse,
I was so informed; but it was you
your self who informed me; nor did
I ever yet see any Opinion under
B 4 their

their hands, nor their grounds and reasons for such their Opinions attested: what can be made of this? Let the ingenious Reader judge of the Argument: some Judges and Heralds are of that Opinion, *Ergo* she was Legitimate. In these Cases all that can be said *Pro* and *Con* should have been put indifferently on both sides, when any grave Person is to be consulted; which hitherto hath been done privately on the one side only, without hearing the Reasons on the other side; and you know how Opinions are not rarely given according to the putting of the Case, but very frequent and usual; when many times even the Lawyers themselves differ in their Opinions: But I can compare this to be like nothing more then going about to get hands to a Petition or Certificate. It is not Opinions that ought to sway the Judgment of all indifferent Readers, but solid Reason. And I shall desire to be Confuted with substantial Arguments, not Opinions of this or that man.

And

And now I come to your Reply against my Answers given to the Arguments for *Amicia*, which I shall fully comprehend in short, that the Reader may with less trouble better apprehend the Point.

Page 30, 31.

Where you say, *That my Answer is, that it is true, the Law is so taken at this day ; i. e. that Lands cannot pass in libero maritagio with a Bastard: but I doubt whether it was so taken in the elder Ages of Henry the Second, and upwards: and also that I cite Glanvil Chief Justice of England, who lived in the time when Amicia lived: and that I do also shew you a Precedent, where Lands were given by the Father in free Marriage with his base Daughter: and I say further, that the Common Law in sundry other things is at this day altered from what it was in former Ages, long after the time of Henry the Second ; for which I cite*
Cooke

Cooke upon Littleton in several places:
These are my words.

Your Reply, Pag. 30, 31.

Hereunto you reply to what I
urge out of the Lord Cooke; That
you conceive the Common Law, where
not altered by Parliament, is the same
at this day that it was formerly: and
you cite Cooke upon Littleton, p. 115.
b. (which should have been fol. 115. b.)
who saith, It is a Maxime of the Law,
That whatsoever was at the Common
Law, and is not ousted or taken away
by any Statute, remaineth still; and
so consequently you argue, that if it
ever were the Common Law, that Lands
or Services might pass in libero mari-
tagio with a Bastard, or one that is
not of the Blood, it would be lawful
to do so still; because that part of the
Law is not ousted or taken away by any
Statute:---So that the places which I
have cited, do not prove, That the Com-
mon Law at this day doth vary from
what it was in former Ages in any par-
ticular; but only that it was taken to
be

be otherwise in those dayes : just like some Cases in our Reports, which at several times have been adjudged directly contrary to each other ; but notwithstanding the Law was still the same.

My Answer.

To this I Answer; First, To the Maxime of Law, wherein it is said, *that whatsoever is not ousted or taken away by any Statute, remaineth still*; wherein the word *Ousted* must needs be understood disjunctively, or conjunctively : if disjunctively, then the words (*not ousted*) must be understood of some other way than by Statute; and then it is as much as to say, *not altered* : and so implies a common practice of the Law, in such cases, contrary to what it was formerly. If it be understood conjunctively, then the words must needs bear this sence; that the Law is the same still in all points as it was before, except where taken away by Statute : And thus understood, I shall produce you *Cooke* against *Cooke*, in his Book
upon

upon Littleton, fol. 34. §. 39. His words are these----*In ancient time it appeareth by Glanvil, l. 6. c. 1. it was taken (that is, the Law was taken) that a man could not have endowed his wife ad ostium Ecclesiæ of more than a third part ;* but of less he might : but at this day the Law is taken as Littleton there holdeth ; which is, that a man may endow his wife ad ostium Ecclesiæ of his whole Land, or of the half, or other less part. So that here we see the Law in this case is altered, and without any Statute ; ergo the Law is altered without any Statute. Also Ibid. fol. 8. a. towards the bottom, ---Of ancient time the Heir was permitted to have an Action of Debt upon a Bond made to his Ancestor and his Heirs ; but the Law is not so at this day : But herein was no Statute made to take it off ; ergo, the Law in that case is altered without any Statute : And so in many other Particulars, which might be here cited ; wherefore methinks it is the better exposition of that Maxime, that the words be understood disjunctively ; and so*
it

it thwarts not with that which the Lord Cooke saith in these other places: and the word (or) is meerly a dis-junctive.

Your Second Reply, p. 31, 32.

But you go on and say, you would come as near me as you can; and you acknowledge, that though the Common Law was ever the same, where not altered by Parliament; yet in former ages they did in some Particulars take the Law to be otherwise than they now do: and if I could prove that they did so in case of free-marriage, it would take off your Argument; because the ancient Deeds and Grants are to be expounded as the Law was taken to be at the time of the Grant; as Cooke upon Littleton saith, fol. 8. b. For say you, that if it had been taken in former ages, that Lands might have been given in free-marriage with a Bastard, or one not of the bloud, it would have certainly been observed by some of the Sages of the Law.

My

My Answer to your Second Reply.

I pray you, if in former Ages the Law was taken otherwise in some particulars, than at this day it is taken: which hath now joyned (to strengthen it) the common practise of the Nation (which I take to be the Common Law at this day) for many Ages together, without any contradiction; what rational man can deny, but the Law in such particulars is clearly altered? For in those Cases (I speak not of any altered by Act of Parliament) I would ask you whether the Law be now altered or no? If it be altered, then you are in an errour, to say the Law remains the same; and if it be not altered, then the former Law is still our common Law, and not the Common Law as at this day it is taken; which is used otherwise at this day than formerly: Then our Common Law in the particular cases mentioned, and at this day used otherwise than formerly, is no Common Law of *England*;

land ; because (say you) the Common Law cannot be altered without an Act of Parliament, but remaineth still the same ; and so the Judges of *England* in all these cases, at this day do not judge aright according to our Common Law : I pray you, see what absurdities follow hereupon : And as to proving of Lands to have passed in free-marriage with a Bastard in the Age of *Amicia*, I have already given you a Precedent for it ; and the Lands did pass accordingly : and shall make it good (when I come unto it in its proper place) that *Geva* was certainly a Bastard, by as good proof as possibly can be expected in such a Case : But more of this, when I come to *Geva*.

Your third Reply, pag. 33.

In the next place, you have a long Harangue from p. 33, to p. 41. wherein you endeavour to restrain the words of *Glanvil*, which are these,
Quilibet liber homo quandam partem terræ suæ cum filia sua, vel cum aliqua

aliqua alia qualibet muliere, dare potest in maritagium: and first, you begin to prove it by Scripture, *Deut. 14.* where a Liberty was given to the *Jews* to eat whatsoever their soul desired; and yet this must be understood of such meats as were legally clean and allowed them by the Law.

My Answer to your third Reply.

I have seldom known, nor I believe any other, any such Question as this, whether *Hugh Cyveliock* had a former wife, to be proved by Arguments of Scripture, or Nicety of Law; which is meerly a Question of History: For the Text urged by you, *Deut. 14. 26.* I find no such general Latitude, which needs any Exposition as you mention: The words are, ---*Thou shalt bestow that money for whatsoever thy soul lusteth after, for Oxen, or for Sheep, or for Wine, or for strong drink, or for whatsoever thy Soul desireth.* The Text is clearly restraining to those things here mentioned, which they were allowed to
eat

eat and drink according to their Law. What is this to the point in hand ? *ergo Glanvil's words, Cum aliqua alia qualibet muliere*, must be understood to be agreeable to the Law of the Land where he lived ; that is, (as you would have it) to any except a Bastard, or a Woman not of the Donors blood : But how doth that appear to be the Law in *Glanvil's* time or upwards ? *He was the first who reduced our Law into writing : Omnium primus ius legem reddere aggressus est*, saith *Spelm.* in his Gloss. p. 333. And it is easie to observe how lame and imperfect our Law was in those times, towards what it was in *Littleton's* time ; and especially compared with these last ages : But in short, your Expositions all along to pag. 41. by *Bracton*, or *Fleta*, or others, or making *Glanvil* to fight with himself, unless *Glanvil's* words be interpreted as you would have them, I leave to wise men to judge, who will take pains to scan them, whether they be pertinent. For that wherein you say *Glanvil* contradicts himself, because

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he

he saith, *that none can give Lands in remunerationem Servitii sui to hold good after the death of the Donour*; what is this to the point, why a man cannot give his Lands to any *in libero maritagio*? or that it was not usual in those dayes to pass Lands in free marriage with a Bastard, calling her only his Daughter, without the addition of Bastard, and thereby, owning her to be of his blood and kindred? The sum is this; The Lawyers of latter ages do expound the Law, That Lands cannot pass in free marriage with Bastards; *ergo* it was so taken in *Glanvil's* time, and his words must be so understood, though he say no such thing: This is a great *Non sequitur*. And yet our Lawyers say now, Bastards are capable of receiving Lands after they have gained a Name by reputation; which *Amicia* had gained; as we see in the Deed, where she is called and owned by the Earl for his Daughter: But you tell me in the Close, *pag. 41.* That the Common Law hath alwaies been the same, because *Cooke on Littleton*

tleton saith, That *the Comon Law* hath
no Controller but an Act of Parliament:
 which I have told you, must be un-
 derstood, whilst it remains the Com-
 mon Law; which yet may alter, and
 hath altered, in sundry Particulars,
 without any Act of Parliament; as I
 have before proved.

But here I must turn you back to p.
 12, & 13. where this hath been suffici-
 ently answered before.

Pag. 42. Your Fourth Reply.

You say, *There is not any weight in
 what I say,* viz. That it seems to me
 in those elder ages Bastards were re-
 puted of the Bloud, by the frequent
 Appellation of them by the names
 of Unkle, Brother, Daughter, Co-
 sin, &c. for by the same reason I
 should repute them of the bloud now,
 this Age being as Civil to them in
 their expressions, as any Age could
 possibly be.

My Answer.

But where do you find almost in any Deeds of these last Ages, where such are not now called Bastard-sons, Bastard-daughters, Bastard-brothers, &c. in all Settlements and Conveyances of Annuities or Portions; which in the very ancient Ages was never used: Nay, what say you, if I affirm they be of the Bloud both now and in former Ages? though the Law will not allow them so, because they now are esteemed in the eye of the Law *quasi nullius filius*; for if A. have a Bastard-son or daughter, which is really his; they must needs be of his bloud: For no Law can extinguish Nature; though by the Common Law they are not now esteemed so. And what If I say, that the reason why in the Deeds of those elder Ages they were called Daughters without any addition of Bastard, whereby the Party owned them to be of their Kindred and Bloud, was, that the Inheritance of the Lands passed

passed in *libero Maritagio* with such, might descend to their heirs ? For our Lawyers now tell us, that Bastards are capable of receiving Lands after they have gained a Name by Reputation ; why may not then Bastards, having gained the Names of Daughters, receive a Grant from their owned Fathers, either in Frank-marriage, or otherwise.

And now you come to *Geva*, and my Precedent.

Pag. 43.

For the Precedent I have given, wherein (I say) Lands were given in *libero maritagio*, you conceive it will not hold ; 1. *Because it doth not certainly appear that Geva was a Bastard ; for in all the Records that I cite, she is called Earl Hugh's Daughter ; and in one of them, she calls Randle Earl of Chester her Cousin ; which makes it probable, that she was legitimate ; especially since you do not find by any Deed, Record, or Author whatsoever,*

that she is at any time called a Bastard.

My Answer to the first Reason.

Though we find her not called Bastard in express terms; yet we find it implied in an Author contemporary, by certain and sure consequence, which I believe can never be fully answered.

Secondly.

These words of Ordericus p. 787.--- Richardus pulcherrimus puer, quem solum ex Ermentrude filia Hugonis de Claro monte genuit, consulatum tenuit, &c. by which words you are not satisfied, but he might as well mean, that Richard was the only Son, as well as the only Child begot on Ermentrude: for there is no necessity to take the word (solum) adverbially: neither is it marked as an Adverb in Ordericus his Book; though it be so in mine: ---And though he tells us, p. 522. that E pellicibus plurimam sobolem utriusq; sexus

Ba. *sexus genuit* ; yet he saith not that Ge-
va was one of them.

My Answer to the Second Reason.

But you will not perhaps be satisfied of his meaning ; for he saith not, *Quem solum filium*, as you interpret him ; but indefinitely, *Quem solum ex Ermentrude genuit* : So that, whether *solum* be understood adverbially (which certainly to most men will here seem more proper) or whether you take it for a Noun, you can make no more of it in English than thus, *Richard* a beautiful youth, whom only Earl *Hugh* begot on *Ermentrude*, &c. *For whether we English it, whom only he begot ; or whom he only begot , it retains the same sense ; for if any other person, either Son or Daughter, were begotten on *Ermentrude* by Earl *Hugh*, then could it not be said that *Richard* was only begot on *Ermentrude* ; and can any man now imagine from this testimony of *Ordericus*, that Earl *Hugh* had any other Issue by *Ermentrude*

but only *Richard*? So that if we believe *Ordericus*, who living in that Age, knew the truth better than we can now, *Geva* was no Daughter by *Ermentrude*; and by certain consequence must be one of the base Issue mentioned by *Ordericus*, though he names none in particular: and she cannot be by any former Wife (your old Subterfuge) because Earl *Hugh* had never any other Wife; which ought either to be proved by you, or else no good reason appears to the contrary; and then sure the Deed proving *Geva* had Lands given in free Marriage, the precedent holds and proves, that Lands in those elder Ages passed with Bastards in free Marriage, whom they owned for their own Children; *supra in p̄m. quod erat demonstrandum.* I add further, that if *Hugh Lupus* had a Daughter by *Ermentrude* (for you your self confess and expound the words of *Ordericus* to be, that Earl *Hugh* had no other Son) what advantage is it for your purpose, unless *Geva* was that Daughter, and so she be legitimate?

timate? See now, then *Geva* must needs be Sister of the Whole-blood to Earl *Richard*, and by consequence sole Heir to her Brother of all the Earldom; as you interpret *Ordericus*: and so I leave it to every Readers Judgement; and then by your own Argument, she should have had the Earldom.

Thirdly, Page 45.

Then you proceed to my Objection, That if *Geva* had been Legitimate, her Issue ought rather to have succeeded into the Earldom of Chester than *Randle de Meschines*, after the death of *Richard Earl of Chester*: That doth not at all follow (say you) because it is possible the Earldom of Chester at that time (as most times Earldoms anciently were) might be entailed on the Heirs-Males only, and then the Male Line being extinct, why might not the King confer it as well upon *Randle de Meschines* who was a near kinsman, as on a stranger, which later course is also usual at this day; and

and it is very probable, that the Earldom was entailed on the Heirs-Males onely; for James York in his union of honour, p. 105. says, That this Randle was made Earl by grant of King Henry the First; and if so, it came not to him by Descent; and so all that I object, you say, is fully answered. But if it had been so, that the Earldom had been to descend to the Heirs general; if Geva was Daughter of Hugh Lupus by another Wife besides Ermen-trude, then the Earldom of Chester would have descended from Earl Richard to Randle de Meschines by his Mother, being Aunt of the whole blood to Richard, and not his Sister Geva, or her Issue, they being but of the Half-blood.

My Answer to the third Reason.

Let any ingenious Reader observe, whether any substantial Answer be here given at all; you say it is possible that the Earldom was then entailed on the Heirs Males onely; but will you argue upon possibilities, to
 prove

prove a thing *de facto*? but suppose
 it were so entailed, why should not
 the King have conferred it on the Is-
 sue of *Geva*, before *Randle de Meschi-*
nes, that being the Issue of a Sister,
 and *Randle* the Issue but of an Aunt?
 or why may you think that the King
 (though he gave it to *Randle*) did
 not give the honour and Lands unto
 him as in whom was the greatest right
 to have it? but to this you give no
 Answer at all; but we find not that
 the Issue of *Geva* ever moved for it.
 The true reason being that her Ti-
 tle was not good; but had she been
 Legitimate, it is more then proba-
 ble, she would have looked after the
 obtaining of so great an inheritance,
 yea and obtained it too before *Ran-*
dle: Nay, had she been but of the
 Half-blood (which is your old and
 onely Subterfuge) she would by all
 probability have buzled hard for so
 great an Estate in those Ages, be-
 fore she had lost it; but you are now
 come to an excellent way of arguing
 by ifs, and ands, and possibilities;
 by which means Answers may be
 made

made to any thing even to eternity ; but if you would substantially prove *Geva* to be of the Half-blood, then must you prove *Hugh Lupus* to have another Wife before *Ermentrude*, and *Geva* to be the Daughter of that very Wife ; I would fain have you but to prove that ever he had another Wife by any Historian, or Record ; this would be something ; but what you here say, is nothing ; and then you Instance, that the Earldom of *Chester* probably was entailed on the Heirs Males onely, becauses *James York* saith, that *Randle Meschines* was made Earl by the Kings grant ; and if so (say you) it came not to him by descent ; who must grant it him , but the King ? what doth hinder, but the King gave it to him as one who by descent had most right to it, although he was not the direct Heir Male of Earl *Hugh*, but of another Family, yet a near Kinsman by marriage ? And therefore must now come in by a Grant ; yet for all this, no necessity, that the Earldom was entailed

at

at that time on the Heirs Males only.

Fourthly, Page 46.

And now you come to show me a Precedent (which I desired) where ever the Heirs of an Aunt inherited before the Heirs of a Sister, both legally born, &c. And now you will shew me where an honour in such a case came to the Heirs of the younger Sister, and not to the Heirs of the elder Sister; which is full as much (say you) as if it were done in the case of a Sister and an Aunt; and you Instance out of Birds Treatise of Nobility, p. 96. in the Case of Raufe Lord Cromwell, being a Baron by Writ, died without Issue leaving two Sisters and Co-heirs: Elizabeth the eldest Married Sir Thomas Nevill, Joane the younger Married Sir Hunt Bourcher: Bourcher was called to Parliament as Lord Cromwell, and not Sir Thomas Nevill.

My

My Answer to the fourth Reason.

Bird indeed alledgeth this Precedent in the place cited ; where he tells us before, That the Question or point [that is, whether a Barony by Writ may descend to the Heirs Females or no ?] is somewhat perplexed, by means of difficult Presidents ; and now in this place he saith (coming to compound the Controversy) that it is observed, that some Precedents do prove that Baronies by Writs have descended unto Heirs Females, whose Husbands have been called to Parliament, whether in regard of themselves, or in regard of their Wives, it matters not : and secondly , out of the Precedents it is to be observed, That the King is nevertheless at liberty to call to Parliament, whom he shall think most meet in his Princely Wisdom, as his Majesties Progenitors in former Ages have observed ; and then he brings in the Case of the Lord *Cromwell* before mentioned : thirdly, it is observed,

served, that if a Baron by Writ dye without Heir Male, having Daughter, or Sister, or other (who can challenge the Lands of such Baron deceased) the Title of such Heir Female hath been heretofore allowed, &c. Now the Case comes as near to the Case of *Geva*, as an Apple to an Oyster ; for let any rational man be Judge, whether the King by his Prerogative Summoning by his Writ to Parliament the Husband of the younger Sister and Co-heir, before the Husband of the elder Sister and Co-heir, both of them sharing the Lands equally, be any thing to the Point of *Geva*, or to satisfie why she should not have had both the Earldom of *Chester*, and all the Lands thereof, had she been legitimate, and by consequence sole Sister and Heir to her Brother *Richard* Earl of *Chester*. And in this Case of the Kings Writ proposed, yet you see the Sisters shared the Lands, as by right they ought to do ; and so I shall pass to your next Reason.

Fifthly,

Fifthly, Page 48.

But now you come and ask me what I will say, if this Deed which I alledge to be made to Geva, will not at all concern Amicia ; because Cook upon Littleton, fol. 21. b. (which in your Book you have miscited also by putting the Page for the Folio) tells us, that these words [in liberum maritagium] are words of Art, and so are necessarily required : As if a man give Lands to another with his Daughter in Connubio soluto ab omni Servitio, yet here passeth but an Estate for Life : And the words in the Deed to Geva are not in liberum maritagium, but in libero conjugio ; and so are but like the words in Connubio soluto ab omni Servitio, which make but an Estate for Life ; and so might be passed to a Bastard or any other — and then after you say, the Deed to Geva is worded as if it intended onely an Estate for Life, there being no mention of her Heirs : and secondly, it is given to Geva alone, and not unto a Husband
with

*with her; whereas that given to Man-
waringe with Amicia in free Marri-
age, mentioneth their Heirs.*

My Answer to the fifth Reason.

Though the Lord Cook say, *That
by these words in Connubio soluto ab
omni Servitio, there passeth but an
Estate for life;* yet he saith not, *That
by these words in libero conjugio, pas-
seth onely an Estate for Life:* nor in
Case the words had been *in libero
Connubio*, he saith nothing of them;
although you are pleased to say, *That
the words in libero Conjugio, are but
like the words in Connubio soluto ab
omni Servitio, which make but an
Estate for Life.* I think, Sir, you and
I being no professed Lawyers, had
best to leave these things to the Sa-
ges of the Law; and notwithstanding
the Criticism, I beg both your Par-
don, and my Lord Cooke's too if he
should have said it (which I do not
find that he doth) in this Case of *Ge-
va*; for the Lands in the Deed men-
tioned did descend to her Heirs by

D

Basset :

Basset: and even at this day it is called *Drayton-Basset*, in distinction of other Towns called also *Drayton*; because the *Bassetts* were anciently Lords thereof; and this very Deed was taken out of a Manuscript in *Arundel-house*, wherein the old Deeds belonging to the *Bassetts* of *Drayton-Basset* in *Staffordshire* were enrolled about the Reign of *Richard the Second*, as you may see it mentioned in my Book. Again you say, *The Deed to Geva is worded as if it intended onely an Estate for Life; and is made to Geva her self without the words [her Heirs] mentioned therein;* where you are to take notice, that this Deed of the first *Randle Earl of Chester* is but a Confirmation to his *Cosin Geva* of a former Deed, *Sicut Comes Hughes ei in libero Conjugio dedit*; which Deed (may be) had the Land passed to her and her Heirs, or to her Husband with her and to their Heirs: But for certain, she and her Heirs by *Basset* had the same Land, however *Earl Hugh's* Deed did run: I add further to your Objection

jection, that it was intended but for Life, because given to her onely without the word (Heirs): *Cooke* upon *Littleton*, fol. 21. b citeth *Peter Saltmarsh Case*, and *Fitz Herbert de Natura Ercuinum*, fol. 172. that Lands may be given by a Man to his Son in Free-marriage; and why not as well to his Daughter alone in Free-marriage? which words of Frank-marriage do of themselves create an Estate of inheritance, as *Cooke* saith in the same Page. And now we have done with *Geva*; and I appeal to the indifferent Reader, whether my Reasons alledged for her Bastardy in my other Book, be by you in the least taken off by any solid Answers or Reason to the contrary; although in your Book you brand me with an aspersion of her.

Page 50, 51.

And now you come to the second Reason alledged, *To prove that Amicia is legitimate; which you say hath its full strength yet, and is not at all*
D 2 *weakened*

weakened by any thing I have said :
 For in my computation according to
 reasonable suppositions it cannot be well
 affirmed , that Hugh Cyveliok was
 above seven or eight years , or there-
 about , older then his Wife Bertred :
 But by your computation, you say pos-
 sibly he may be 26. or 27. years older :
 whosoever will take pains to scan both
 our computations , will see which is
 more moderate and reasonable : in
 yours you suppose Maud, Earl Hugh's
 Mother , to be born the second year af-
 ter her Mothers Marriage ; and Maud
 Married in the 16th year of her Age ,
 and Earl Hugh born in the 17th year
 of Maud's Age which falls in Anno
 1129. and so all in the utmost possibi-
 lity ; and if we may compute by possi-
 bilities, as you do , I say Earl Hugh
 might be but four years older then Ber-
 tred ; but if you will go by strong pro-
 babilities, that Earl Randle (Father
 of Earl Hugh) was Married by Ro-
 bert Earl of Gloucester unto Maude
 his Daughter, thereby to draw him to
 the Part of Queen Maud his Sister,
 about the very year 1139. before which
 time

time we find no mention in our ancient Historians of Randle's affairs against King Stephen ; but in that very year we do, and then by some of them stiled Son in Law to the Earl of Gloucester ; but not before that year, that I remember: I say, if we reckon by utmost possibilities, Earl Hugh could not possibly be above 16 or 17 years older then Bertred ; but rationally we may imagine he was not so old by many years : and though our guesses may be a little in the dark, yet I think I am about the very time of his Marriage: so that if your Argument carry its full strength, it is certainly but a little strength, if any at all; it is but this: Earl Hugh was older then Bertred, Ergo he had a former Wife; and of your account, you say you may abate me several years, and yet Earl Hugh be a great deal older then his Wife: wherein you say true: but I can gather no such quantity of years in respect of his Age, reasonably to suppose him to have had any former Wife.

The third and fourth Reasons (you say) are onely urged as concurrent Proof with the Argument brought from the words in *libero maritagio*: so then your *Achilleian Argument* failing, all the other fall to the ground; to which hath been spoken before.

But yet you muster up all your forces to strengthen the third and fourth Reasons for *Amicia*: as Hugh Cyveliok's Countess being witness to the Deed of *Amicia* in *libero maritagio* [and yet you, that take no notice of the Law in ancient times from the Law of later Ages, and insiſt ſo much upon Law, cannot but know a Wife is no good Witneſſ either for or againſt her Husband, and yet both here and in ſundry other Deeds we find them put as Witneſſes to their Husbands Deeds:] also Raufe Manwaringe calling his Daughter Bertrede after the name of
the

the Countess [methinks he should rather have called her after the name of his former Countess, Mother of Amice, if Earl Hugh had had any such Wife] also Roger Manwaringe in another Deed calling Randle of Chester and Lincolne his Uncle : Raufe Manwaringe being with the Earl at Coventry and a Witnes to his Charter to his Burgeses there : also Roger Manwaringe, and Henry de Audley who Married his Sister, being Witnesses to the Deed of Randle Earl of Chester and Lincolne, concerning the Abby of Deulacres: Henry de Audley's being a Witnes to the Deed of Robert de Fernans (this is far fetcht) whose Mother was one of the Sisters and Coheirs to the aforesaid Earl Randle: as also Rafe Manwaringe being a Witnes to one Deed of Hugh Cyvelioks, and to three other Deeds of the said Earl Randle : These (say you) are such circumstances as shew a more great and constant intimacy between the said two families, then probably would have been, if Amicia had been a Bastard.

To all which is easily answered, that being Witnesses to Deeds argues no great intimacy with the Parties; and though the Judge in regard of his place were more conversant with the Earl, yet *Amicia* may be a Bastard for all this: Let the Ingenious Reader judge. The like multitude of Charters, or more, you may find, whereto *Philip Orreby* Judge of *Chester* was Witness in like nature; and also many other Gentlemen, as well as *Roger Manwaringe* and *Henry de Audley*: But I speak not this to lessen your Family, but to show the weakness of the Argument.

Page 54.

You say, *Although I object that frequently in Histories and Records Bastards are called Brother, Uncle, Cousin, Son, and Daughter; you grant it to be true; but that (you say) was done either when Persons came to be great, as Robert Earl of Gloucester did; or else done by their Relations out of humility. But I can hardly find one (you be-*

believe) that I can certainly prove to be a Bastard, or the Son of a Bastard, who doth presume in a Deed to call so great a Person as the Earl of Chester was, his Brother or Uncle, unless he came to be a very great Person himself.

Indeed. Precedents are scant ; but some there be : What do you think of *Ranulpho de Aſtbury nepote Comit- tis Ceſtriæ* ; who is put the last of all the Witneſſes in the Deed, as you may ſee in the *Addenda* of my Book ? Certainly he was but an ordinary Gentleman, nor Knight, nor Lord : But you will ſay, I cannot prove him a Bastard ; yet I ſhould be glad to find out his Extraction, if he were not : 'tis a ſhrewd preſumption.

And now we ſhall come to another of like Nature.

Pag. 54.

Here you tell me, you believe Richard Bacun's Mother was not a baſe Daughter of Hugh Cyveliok, nor any Daughter of his at all ; becauſe we find
in

in Monasticon, part 2. pag. 267. in his Deed of the Foundation of Roucester-Priory in Staffordshire, his Unkle Randle was living (where take notice he calls Randle Earl of Chester his Unkle) and a William was then Archbishop of York, and R. then Bishop of Chester; and there was neither Archbishop of York whose name was Will. nor Bishop of Chester whose name began with R. in the time of Randle Blundevil; and therefore you think it was Randle de Gernoniis, that Bacun calls Unkle, and not Randle Blundevil.

But truly you are deceived in it: For it is true, as you observe, that there was no such Archbishop of York called *Will.* nor Bishop of Chester whose Christian Name began with *R.* both living at one time, either in the time of *Randle de Blundevil* or *Randle de Gernoniis*, that I can find: nor was the Bishop of Chester (being also Bishop of *Lichfield* and *Coventry* at this time) then subject to the Jurisdiction of *York*, but *Canterbury*: Wherefore I do conceive the Roll,
from

from whence the Deed in *Monasticon* was written, is mistaken in *Wil.* and *R.* and miss-writ therein from the Original Chart it self; so that certainly here is a mistake: But that which is the greatest certainty to guide us, is the body of the Deed it self; which seems to be perfect and right; wherein he tells us, that he hath procured the Confirmation and Warranty of *Randle* Earl of *Chester* his Unkle for the ratifying of that his Grant. And the very next Deed following in the Roll, and transcribed in the *Monasticon*, is the Deed of *Randle* Earl of *Chester* with Confirmation and Warranty accordingly; whereunto *Roger Lacy* Constable of *Cheshire*, is a witness, who only lived in the time of *Randle Blundevil*, and of no other Earl of *Chester*; as you may see it clearly proved among the Barons of *Halton*, in my Book; nor is there any other Deed of Confirmation and Warranty to be found by any Earl, save this; wherefore certainly it must be *Randle Blundevil*, whom *Richard Bacon* calleth Unkle in his own Deed
of

of the Foundation of the said Priory; and then must it necessarily follow, that his Mother was the Daughter of *Hugh Cyveliok*; and it is plain, she was no Co-heir to *Randle Blundevil*: and it doth not in the least appear, that *Hugh* had any other wife, save *Bertred* the Mother of the Co-heirs: nor doth it appear, that ever she had so much as any Land *in libero maritagio*; which you so much stand upon in the case of *Amicia*. And now let every man be Judge, whether I have aspersed (as you call it) this Lady unjustly; and whether she be not a Bastard in the opinion of all impartial Readers: which word *aspersed*, you might well have spared; for Aspersion is when a man maliciously seeks to throw dirt in anothers face unjustly; of which sort of men I hope you do not judge me to be. But these matters fall unavoidably in my way; the truth whereof (as near as I can) I only do endeavour to find out.

And now you come to answer the Arguments and Reasons which I bring to prove *Amicia* a Bastard.

Arg. I.

If *Hugh Cyveliok* had no other Wife than *Bercred*, then *Amicia* must certainly be a Bastard ; for she was not a Daughter of *Bertred*, as is granted on all sides :

But *Hugh Cyveliok* never had any other Wife than *Bertred* ; Ergo *Amice* was certainly a Bastard.

Now the *Minor* is to be proved by the Affirmer ; for *oportet affirmantem probare*.

Your Answer to the first Argument.

By this Rule (you say) I am as much bound to prove her a Bastard, as you are bound to prove that *Hugh Cyveliok* had a former Wife ; because I clearly affirm that, as you affirm the

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My Reply to the first Answer.

I confess what you say to be true; yet the Rule of the affirmative part to prove, in *Logick* alwayes holds true: for a Negative cannot be proved. But I say further, that I have proved her a Bastard by this Argument, unless he had a former wife; for you must either deny the *Major*, or the *Minor*, or grant them; wherefore the affirmative part lies now on your part to prove.

Your second Answer to my first Argument, pag. 58.

A less proof will serve by many degrees to prove a thing done long since, than will be requisite to prove a thing done lately; the like reason is in all Cases of Antiquity; So that if you only prove her called Daughter, being so long since, she ought to be presumed legitimate, unless the contrary do appear; for the proving she was not by Bertred, doth not prove she was a Bastard,

stard, but only proves she was either a Bastard, or else by a former wife; and our Law at this day is, That a Bastard shall not be allowed to be proved a Bastard but in his life-time; why should Amice then be charged with Bastardy so many hundred years after her Decease?

My Reply to your second Answer.

Where you say, if you only prove her called a Daughter, being so long since, she ought to be presumed legitimate till the contrary appear: I shall grant it; but here are many strong reasons to the contrary; and you are now to answer the Argument in hand; and for your asserting, that my proving she was not by *Bertred*, doth not prove her a Bastard, but proves she was either a Bastard, or else by a former wife; this is not to the Point; for the Argument runs, If he had no other wife but *Bertred*, and she no Daughter to *Bertred*, then certainly if she be a Daughter, and so called, she must needs be a Bastard:
and

and as to the point of Law you urge, that a man cannot be proved a Bastard but in his life-time to the prejudice of an Estate; because the dead person cannot answer to the exception: Yet though the Law allows not this in Pleadings, what hinders but Bastardy may be proved by History or Argumentation, after the Parties death? Suppose in a Register-Book I find such a Bastard Christened one hundred years ago, may not I justly call that Person a Bastard, whom I find so Registred? The law may make a Bastard legitimate by Act of Parliament: as we find in the case of *John of Gaunt's Children* by *Katharine Swynford*, 20. Ric. 2. 1397. according to all intents and purposes in the Law, *excepta dignitate Regali*, whereby they shall inherit as if they had been lawfully born; but may not we therefore call them Bastards? No Law can make a Bastard once born, to be no Bastard in nature; for *quod factum est semel, infectum reddi non potest*. And to this your second Answer,

swer, I believe it is clearly evinced without further demonstration.

Your third Answer to my first Argument, p. 59.

You conceive that the passing of Services in libero maritaggio with Amice, doth absolutely prove that she was a lawful Child, and by consequence must be by a former wife; and that she would not have been stiled as she is in the Deed, unless she had been a legitimate Daughter: and you cite Spelman's quoting Coustum. du Normand. Art. 77. Quoties enim agitur de honore vel commodo filiorum, appellatione filiorum non comprehenduntur Bastardi.

My Reply to your third Answer to my first Argument.

This is what before you have said over and over again; and hath before been answered by me: But I conceive, that neither the naming of her Daughter in the Deed, nor passing of Services with her *in libero ma-*

E *ritaggio,*

ritagio, doth at all prove her legitimate ; for I have before told you, and shall entreat the judicious Reader to look back where I have before spoken of it ; That in those ancient Ages the word daughter was frequently used without the addition of Bastard, both in old Deeds and Histories : nay rarely or never was it otherwise used even to Bastards as well as Lawful Issue ; whereof are sundry Examples, as is well known to all such as are skilled in Antiquities : and by your own Argument, if she were not called his Daughter, no estate of inheritance could have passed by the Deed, though she were a Bastard ; because hereby she is owned to be of his Kindred and Bloud ; and that Lands have passed *in libero maritagio* to some such, who are known to be Bastards, though not so named ; whereof I have shewed a Precedent of those Ages in my Book, which is not refelled yet by any solid Reason to the contrary, as the ingenuous Reader may perceive *supra*, pag. 18. of this Book, & de-
incept.

incept. And what you add out of *Spelman*, is little to the purpose, that in cases of honour and profit distinction was then made, that by the appellation of Sons, Bastards are not comprehended by the Customs of *Normandy*: what then? this supposeth that in other cases and formerly by the appellation of Sons, Bastards were comprehended: This makes directly against you: and you know what *Spelman* saith in the very words next following---*That the ancient Northern People admitted Bastards to succeed in their Inheritance; and that William the Conquerour was not ashamed of that Title, who began his Letter to Alan Earl of Little Britaine (as he did many others) Ego Willielmus cognomento Bastardus.* But what is all this to the answering of the Argument, or proving *Hugh Cyvelioke* to have had a former Wife? only you would have the words *in libero matrimonio* to prove *Amice* absolutely legitimate: this is all the Answer you give to the Point; and this will not do it, as is before proved; whither

I have referred the Ingenious Reader.

Your fourth Answer to my first Argument, p. 60, 61.

And here you say, that if all must be Bastards, if we could not tell who were their Mothers, nor directly prove their Fathers married, we might then conclude most Persons Bastards; and so you could frame my own Argument against me thus; -- If Roger Manwaringe (who lived about 1119.) had no wife, then William, Randle, and Wido (Sons of the said Roger) were certainly Bastards: But Roger Manwaringe aforesaid had no wife; ergo, &c. Now if this Argument against Amicia will hold, it would also hold against these three Children of Roger, and so against all others in like nature.

My

*My Reply to your fourth Answer to my
first Argument.*

Here you argue well ; and I say to your *Minor*, that *Roger* had a Wife, though we yet know not who she was : and this appears certainly, because the Lands descended from their to heir. But I frame my affirmative part more formally thus : --If the Son and Heir of *Roger* succeeded by descent in his Inheritance, then *Roger* had a wife ; But the Son and Heir of *Roger* succeeded by descent in his Inheritance ; this is apparent by the enjoyment thereof from heir to heir ; *ergo*, *Roger* had a wife.

If you deny the Sequel of the *Major*, I prove it thus--No Bastard can succeed in the Inheritance without a special settlement ; *ergo*, if the Son and Heir of *Roger* succeeded by descent in the Inheritance, then *Roger* must needs have a Wife ; and nothing appears here of any special settlement.

And so you see, the Argument retorted is answered. E 3 Now

Now if you could prove by like Reason, that *Hugh Cyveliok* had a former wife before *Bertred*, it would be some Answer; but the passing of Lands *in libero maritagio* in that age, is no certain Argument of Legitimacy; for then I confess you would prove *ex consequenti* *Hugh Cyveliok* must needs have another wife; which is the chief contest between us; for all the rest of your Arguments for her Legitimacy, are little material, and not solid. Now you repeat this often over and over again, where you have as oft been told, that Land in those former Ages did pass to Bastards *in libero maritagio*; whereof I have given you one Precedent; which neither yet hath been, nor (as I conceive) can be rationally answered: Besides the words of *Glanvil*, implying the same; and the Term of Bastard, was, for certain, usually omitted in the Deeds and Histories of those times; and the owning them for Daughters in their Deeds, possibly that the Lands might pass to their Heirs, as owning them

to

to be of their Kindred and Bloud, are all Reasons against the Deed; that it doth not prove her legitimate: Neither is the Case of *Amice*, and the three Sons of *Roger* alike; for there is nothing that appears against them, either to prove or suspect them for Bastards, as there is in the case of *Amice*; for here is a wife of *Hugh Cyvelioch* certainly recorded; a Son and four Daughters carrying away all Earl *Hugh's* Lands: also Earl *Hugh* certainly known to have sundry Bastards; and *Amice* having no share of any of the Lands whatsoever, though the Eldest Daughter of Earl *Hugh* legitimate by a former wife, as you suppose: all which carries more than a bare probability that *Amice* was a Bastard. And therefore here is a necessity of proving a former wife, which I firmly believe Earl *Hugh* never had: And to this you say, the falling of the great Estate to the Co-heirs, was the cause of their being taken notice of by the Historians of that Age; which Inheritance (say you) came to them as Sisters to *Ran-*

dle of the whole bloud (although you prove not that Earl *Hugh* ever had any other wife) and *Amice*, you say, was of the half bloud ; but you prove it not. And you say further, that *Ric. Bacun's* mother was not any Child of Earl *Hugh*: But that she was Earl *Hugh's* Daughter, I have clearly proved before, pag. 23. So that all these strong Presumptions of the Bastardy of *Amicia*, I leave to the Reader, to judge whether any thing hath been substantially said by you to evince any mans impartial judgment to the contrary, or that hath at all answered my first Argument.

And now you come to answer my second Reason or Argument against *Amicia*, which I framed thus, Whatsoever is given in frank-marriage, is given as a Portion ; now the release of the Service of one Knights Fee in Frank-marriage (according to your Deed) seems not a competent portion for a legitimate Daughter of the Earl of *Chester*; especially for the eldest Daughter ; for so she must
be,

be, being of the first venter, which is always more worthy then the second; and we find the other Daughters Married to four of the greatest Persons in *England*, which is a strong Presumption that *Amice* was a Bastard: methinks *res ipsa loquitur*.

Your Answer to my second Argument,
Pag. 64, 65.

To which you Answer, That it will not hold; for though what is given in Frank-marriage, be given in consideration of a Marriage, yet it cannot properly be called a Portion --- &c. and further you say, that if she had been but a Bastard, yet being a Bastard of so great a Person, she would have had a great deal more given her then these services — But you perceive, if this Dêed of Earl Hughe's had been lost, I would not have believed that Sir Raufe Manwaringe had had any thing with Amicia: because then it would not have appeared: which is a strange way of arguing, about things that were done so long since.

since. And if this be a good Reason, you wonder I do believe that Earl Hugh had any Portion with his Countess Bertred, because (for ought you yet know) it doth not appear that he had. Again you say to my alledging how the other four Sisters were Married, that you have answered that before. And though I say, that if Amice had been legitimate, she being of the first venter, would have been more worthy then those of the second — yet in this Case, when there be Sisters of two Venters, and the Brother be of the second Venter, and the Sisters claim as Heir to their Brother, then the Sisters of the Second Venter shall be preferred before those of the first Venter: and then you close your Answer in telling me that you do not understand why I call this gift of Earl Hugh's (as I do in two several places) a Release of the service of one Knights-Fee.

My

*My Reply to your Answer to my second
Argument.*

Whereunto I Reply, to what is necessary to be replied unto herein; first, whereas you say, *That if she had been a Bastard, yet being the Bastard of so great a Person, she would have had a great deal more then those services given her: it may be so; what then?* here is no reason that we can suppose she had any more Lands, neither any Money answerable to the eldest Daughter of the Earl legitimate, for the other Sisters had all the Lands of Earl *Hugh*; and we find not any more Lands bought by Earl *Hugh* for *Amicia*; but you perceive, that if this Deed had been lost, I would not have believed, that Sir *Raufe Manwaringe* had had any thing with *Amicia*; which (say you) *is a strange way of arguing about things done long since: and how do you know, that I should have believed that he had had nothing at all? but you would have me suppose, that Amicia had as much*
Money

Money as any of the Co-heirs; I am sure she ought to have had so, had she been legitimate; but I believe neither you, nor I, nor any other Person can imagine so: And if the Deed mentioned had been utterly lost, I should not then have believed that there was such a Deed: for how can any man believe that which he never knew, nor heard of? *de non Apparentibus, & non Existentibus, eadem est ratio*: and though I may well suppose, that Earl Hugh had a good Portion with his Wife; because he was so great a Person, yet neither I nor any person (that knows it not) can well guess what it was. And had it only appear'd by Record, That Sir *Raufe Manwaringe* had Married the Earl of *Chester's* Daughter, and nothing appeared what was given, I should then have believed she had had a greater Portion given her, then what is mentioned in your Deed: but the Deed appearing, and so small a Portion mentioned therein, makes it more strong that *Amicia* was a Bastard.

And

And lastly, that you may understand, what I mean by calling Earl *Hugh's* grant a Release of the service of one Knight's Fee; because the grant to *Ranfe Manwaringe* with *Amicia* in Free Marriage is only the service of *Gilbert* Son of *Roger*, to wit, the service of three Knights Fees, he and his Heirs doing to Earl *Hugh* and his Heirs the service of two Knights Fees: so as the Earl hereby reserves to himself the other two Knights Fees as formerly; but now remits the service of the third Knights Fee: nor is it the grant of any Land, but of services incident to Land; but what all this is to the taking of the Argument proposed, I leave to the Reader to Judge.

Thirdly.

And now you come to my third and last Reason, which I did put as a probable concurring Reason, That all the Ancient Historians of our Nation, who lived in that Age, and have Recorded the other Daughters
and

and Co-heirs; yet not one of them mentioning *Amicia*: which probably one or other would have done, had she been a legitimate Daughter.

Your Answer to the third Reason,
Page 67.

Whereunto you say, *You conceive there is no weight at all in it; whereof I am so sensible, that I conceive it not evincing; nor do those Antient Historians take upon them to give an account of all the Children of Earl Hugh, but onely of the Heirs of Randle Blundevill: and yet (you say) this Reason is as strong as my first Reason.*

My Reply.

I do confess I urged it but for a probable Reason; and yet (you say) it is as strong as the first Reason: Then you might have done well to have answered the first better: whereunto I am sure you have made no substantial Answer as yet: wherein I appeal to all indifferent and judicious

ditions Readers, who shall read this Book. And for the probability of this, you say, *That the Historians take not upon them to give an Account of all the Earls Children, but the Heirs of Randle*; but do you find that they have left out any of his legitimate Children, except this whom you suppose legitimate?

And then you tell me, *Mr. Cambden hath mentioned Amicia, though not among the Co-heirs, yet without the brand of a Bastard*: you know well, he is but of very late standing, and not an Historian Contemporary with *Amicia*: and so you and I do now mention her. And then you tell me over again (which I have before Answered) that those Judges and Heralds that have seen your Deeds (of which I have heard, but I am sure I yet know not who they be, nor ever saw any thing attested under any of their hands, nor their Reasons nor grounds for their Opinion) and you mention *Mr. Dugdale* in particular, for whom I have ever had a great esteem as a diligent searcher

searcher of Antiquities, all which you again and again affirm to be of your Opinion, that *Amicia* was legitimate; but because I have before spoken of this *Supra*, pag. 10, 11: I shall onely ask here, what weight can be drawn from this? some Persons are of that Opinion, *Ergo* it is so: whole Councils have erred, unless like the Romanists, you will say *The Pope cannot err*: And perhaps those Persons you mention, never heard what is to be said against that Opinion: whereas it were but equal that in consultation of Opinions, both sides should show what could be said *Pro* and *Con* both together; which hitherto (for ought I know) onely one Party hath privately put the Case, as he pleaseth; I have often told you, I would have you confute me with Reason, not Opinions: for one man may be of one Opinion, and another man of another Opinion; but it is firm Reason which must sway every mans Judgment.

Page 69. 70, 71, &c.

And lastly, you put down two Deeds, wherein Sir Raufe Manwaringe Justice of Chester is subscribed Witnesse before the Barons of Cheshire; for which you think it will be difficult to give a Reason, if Amice were a Bastard,

To this I say, it will not be difficult at all to give a Reason: and much more easie, then to give a Reason, why Amice should be no Bastard, because Sir Raufe Manwaringe is sometime Subscribed before the Barons of Cheshire. The Reason I give is this, that antiently in those Ages, the Justice was put sometimes before the Barons, and sometimes after; and sometimes after the Constable, and Dapifer, and before the rest of the Barons, as it happened: for proof, see the Deed in my Book making the Baron of Halton, the prime Baron, pag. 160. where the Justice comes after all the Barons; also in the Deed

F

of

of Earl *Randle* to his Barons, *pag.* 162. where the Justice comes next after the Constable and Dapifer, and before the other Barons; see also in my Book, *pag.* 130, 131. two Deeds made by *Hugh Cyveliok*: In the one, the Justice is put after the Constable and Dapifer: In the other, the Justice is put before them; many other like examples may be produced else where: I will appeal herein to Mr. *Dugdale*, or to any Antiquary in *England*: and considering the great uncertainty of Subscription of Witnesses in old Deeds, sometimes putting one before another, in one Deed, and again putting the same Person after the other in another Deed; sometimes putting *Domino* prefixed before the names of some Persons in one Deed, and omitting the word *Domino* before the names of the same Persons in another Deed, whereof I have spoken, *pag.* 5, 6. in the beginning of this Book. I say, had you well considered or observed these things, it was not worth your labour to have added those three or
four

four leaſs in the cloſe of your Book.
 And now I appeal to all Readers,
 whether thoſe Grounds and Reaſons
 alledged in my former Book againſt
 the legitimacy of *Amicia*, as alſo to
 prove the Baſtardy of thoſe two
 other Ladies (as you call them) *Ge-*
va, and the Mother of *Richard Bacon*,
 be evinced by any ſolid Answer or
 Reaſon given yet to the contrary.

And ſo I take my leave for ever of
 this Trivial Controverſie; but ſhall
 ever remain,

S I R,

Mobberley

May 15. 1673.

*Your affectionate Coſin
 and very humble
 Servant*

PETER LEYCESTER.

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Courteous Reader,

I Have here in the end of this Book an opportunity to Rectifie some Omissions and Errours in my former Book, which escaped me through misinformation of others, and desire thee to pardon and amend them, as followeth.

Page 206. after the last line but two, should have followed thus—

— Also another *John Brereton*, son of *George Brereton* of *Ashley* Esq; was Baptised at *Bowdon* the 20th day of *June*, 1576. he was afterwards *Sir John Brereton* Knight, the King's Serjeant at Law in *Ireland*; he died without Issue, whose Widow Married the Lord Chief Justice *Bramston*: *Sir John* left all his Personal Estate (which was great) to his Widow, and *Caius-Colledge* in *Cambridge* where he was educated, and to *Randle Brereton* his youngest Brother; which *Randle* lived in *London*

and Married, and had Issue by his Wife a Daughter Married to Mr. *Bowcher* of *Glocestershire*, and a Son called also *Randle Brereton* who hath an Estate in *Lincolnsbire*, and is the only Issue Male, or Heir-male, of all the Family of the *Breretons* of *Ashley* now surviving, 1672.

Page 210. line 27.

Where these words [*With the little Fields above, lying up to Aston Town-field*] are totally to be expunged.

Page 214. line 18, 19.

Where it is said — [*Daughter and sole Heir of Sir Henry Willoughby*] Read — *Daughter and sole Heir to her Mother, and Daughter and Co-heir to her Father Sir Henry Willoughby; for Sir Henry had three Daughters and Co-heirs: Anne, after the death of Sir Thomas Aston, Married Mr. Gray younger Son of the Earl of Stamford; she was by the first Wife of Sir Henry; he had also two Daughters by his second Wife.*

Ibidem

Ibidem page 214. line 25.

Read — *He was Loyal to his Prince, and raised a Regiment of Dragoons for the King at his own cost and charge, and was a Gentleman of good Parts: but was unfortunately — &c.*

Page 223.

The 6, 7, 8. lines are to be expunged totally.

Page 233. line 4.

There it is said — *Maud Married Sir Robert Nedham of Shenton in Shropshire*] which words are to be expunged there.

Page 315. line 5.

Where it is said — *George Venables of Agden Esq; one small Tenement*]
Read — *George Venables of Agden Esq; three small Tenements in Mere, in possession of William Occleston, Michaiah*

chiaiah Bower, and Peter Chorton,

Page 315. line 13.

It is there said — *Edward Allen of Roſthorne*, one ſmall Tenement in *Mere*] Read thus — *Edward Allen of Roſthorne*, one ſmall Tenement in *Mere* in poſſeſſion of *Henry Hunt*, and two parts of *John Occleſton's* Tenement.

Pag. 316. line 18, 19.

Where it is ſaid — *Geffrey Cartwright* Gentleman, hath lately bought the *Shaw-houſe* in *Millington*, from *Millington of Millington*] Read thus, — *Geffrey Cartwright* Gentleman, hath the *Shaw-houſe* in *Millington*, which *Richard Cartwright* his Father bought of *Thomas Shaw*, 1646. which Land was formerly *John Wilkinſon's*; and *Shaw* came to it by Marriage.

Pag.

Pag. 326. lin. 16.

Where it is said — *Came to Francis Cholmondeley*] Read thus — *Came to Francis Cholmondeley for his life.*

Pag. 327. line 10, 11.

It is said — *Thomas Brooke*, Second Son married *Jane* Daughter of one *Weston* of *Sutton* nigh *Frodsham*, Tenant to *Warburton* of *Arley*] instead whereof read — *Thomas Brooke*, second Son, married *Jane Woodsen*, Daughter of *Richard Woodsen* of *Sutton* near *Frodsham-Bridge*: Her Mother afterwards married *William Weston* of *Astmore* in *Halton*; so that *Weston* was but her Stepfather.

Pag. 327. line 13.

Where it is said — *Richard Brooke*, third Son of Sir *Richard*, Professor of *Physick*, died at *Boughton* nigh *Chester*, without Issue, anno Dom. 1667.]
put

put out the words [*without Issue*]: for he had Issue by *Sarah* his former wife, daughter of Judge *Warburton* of *Hifferton-Grange* in *Weverham-Lordship*; although he had no Issue by *Anne* his latter wife, the Widow of *Edward Holland* of *Denton* in *Lancashire*, Esq; and Daughter of *Edward Warren* of *Pointon* in *Cheshire* Esq;.

Pag. 334. line 33, 34.

Where it is said — *Which Chappel Margery his Wife surviving erected, with the two Monuments therein for her self and Husband, anno Dom. 1456.*] instead whereof, read thus, — *Which Chappel this Randle caused to be erected, with the two Monuments therein for himself and wife, an. Dom. 1456.*] for Margery died before him, to wit, 27. Hen. 6. and he died 35. Hen. 6.

Page 280. line 44.

Where in the Margin it is said —
— *Corrupte pro saltuariis, id est, Forrestars*]

restars] Read — *Corrupte pro saltationibus, aut saltatoriis, id est, Deer-leaps.*

Pag. 335, line 12.

Where is omitted as followeth—
— Agnes, another Daughter of John Manwaringe, Esquire, married Sir Robert Nedham of Crannach in Cheshire Knight, and afterwards of Shenton in Shropshire; which Shavington, vulgo Shenton, was estated on him by Judge Nedham, who purchased the same: And this Match appeareth by a blewish Marble-stone or Monument, in the Chancel of Adderley-Church in Shropshire; whereon are the Pictures of the said Sir Robert Nedham and Dame Agnes, and seven Sons and two Daughters; as also an Inscription (all of them in Brass) as followeth,—

Here lieth buried under this Stone the Bodies of Sir Robert Nedeham Knight, and Dame Agnes his Wife, Daughter of John Manwaringe of Pever Esq; : which
said

Said Robert deceased the *iiij.* Day of June, *Anno Dom.* 1556. And the said Agnes deceased the *ii.* Day of May, *Anno Dom.* 1560.

Page 345. line 36.

The word [*where*] is to be expunged: for the Lady *Mary Cholmondeley* died at *Vale-royal*, which she purchased, and gave it to *Thomas Cholmondeley* her fourth Son, and his Heirs.

Page 361, line 19.

Where it is said — *Died unmarried, 1653.*] Read — *Was never married; he drowned himself the sixth day of July, 1653.*

Page 374. line 4.

Read Sir *Amos Meredeth* Baronet. *a.*

Page 376. line 26.

Where is omitted — *Hugh Toft*,
another

another Son, Parson of *Alderley*, and
after of *Stoppport*, 8. Hen. 4. lib. C. fol.
229. T. num. 40, & 42.

Anno 1402. 3. Hen. 4. 29. Novem.
Nobilis Vir Johannes le Manwaringe
Dominus de Stockport presentat ad
Ecclesiam de Stockport Hugonem de
Toft Capellanum, post mortem Jaco-
bi de Bagiley ultimi Rectoris, lib. B.
p. 12. d.

Pag. 381. line 28.

Where is omitted — also another
Son, called *William Leycester*, who
died without Issue.

Pag. 392. line 22.

Where should follow thus — The
said *Robert Venables* bought all the
Demain-Lands, and also *Wood's Farm*
with the *Mills*, called *Cranage-Mills*.
But the *Tenements* were some of them
bought by the *Tenants* themselves, and
some of them by others.

Page 437. line ult.

Add there thus — *Only* Dodleston
remains yet to *Cheshire*, and Marleston
nigh Eccleston, and Claverton and
Lache *nigh* Chester; which were all
part of Atiscros-Hundred.

*These Amendments, Reader, will
set thee straight in the Perusal of my former
Book; together with the correction of the
Errata's of Printing, committed by the great
negligence of the Printer; which are now
mentioned and rectified by a distinct Page at
the end of the said Book. Farewel.*

FINIS.

The Addenda,
traced up in this book